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KATHY MARTIN
COUNTY CLERK

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WALLA WALLA COUNTY
WASHINGTON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR WALLA WALLA COUNTY

MODEL STANDING ORDER – with Exhs. A & B

Eviction Resolution Pilot Program (ERPP)¹

Effective August 24, 2021 through June 30, 2023². Unless Modified by the Court.

1. **Findings.** It is recognized that:

- A. Since late February 2020, the COVID-19 public health and economic crisis have combined to cause great health, social and economic harm to the people of the state of Washington, rendering many thousands unable to meet basic living expenses, including but not limited to rent expenses.
- B. Responding to the public health and economic emergency, on March 18, 2020, Governor Inslee issued Proclamation No. 20-19 imposing a moratorium on most residential evictions in Washington State. This Proclamation was renewed and the eviction moratorium was extended on multiple occasions. The most recent extension (Proclamation 20-19.6) expired June 30, 2021. Governor Inslee issued a Bridge Proclamation 21-09 on June 29, 2021.
- C. Anticipating significant numbers of unlawful detainer filings upon anticipated expiration of the Governor's eviction moratorium, the Superior Court Judges' Association asked its Unlawful Detainer Work Group to develop a means of diverting nonpayment of rent cases away from the courts and into a collaborative resolution process that brings together landlords and their attorneys, tenants, legal aid and housing justice projects, administrators of state and local rent assistance programs, and trained eviction resolution specialists employed by community-based dispute resolution centers. The pre-5160

¹ ERP changed to ERPP given language in ch. 115, Laws of 2021, Sec. 7.

² Per ch. 115, Laws of 2021, Sec. 7(9).

SCJA Pilot Eviction Resolution Programs (ERPs) and related operating protocols were established in King, Snohomish, Pierce, Thurston, Clark, and Spokane Counties, and conciliation and/or mediation services commenced in November 2020.

- D. Current estimates indicate that more than 220,000³ individual households are currently in rent arrears and face the prospect of potential eviction after the current moratorium expires.
- E. On April 22, 2021, Governor Inslee signed Engrossed Second Substitute Senate Bill 5160 into law (*i.e.* ch.115, Laws of 2021) which took effect that day. This legislation substantially changes the law governing landlord-tenant relations, generally prevents eviction for failure to pay unpaid rents accrued during the Governor's eviction moratorium, changes unlawful detainer practice and procedure, provides statewide authorization and support for court-established Eviction Resolution Pilot Programs (ERPPs) beyond the initial six pilot programs established pre-5160 by the SCJA and establishes a right to counsel for indigent tenants in unlawful detainer proceedings.
- F. The final FY 2021-23 operating budget enacted by the Washington State Legislature provides funding to underwrite ERPP operations, implement the right to counsel program for indigent tenants, and includes \$658,000,000 for rent assistance payments to tenants and landlords, offering landlords and tenants significantly expanded opportunities to resolve rent related disputes that might otherwise lead to the filing of an unlawful detainer action following expiration of the eviction moratorium.
- G. Court operations have been substantially curtailed since April 2020 due to the COVID-19 pandemic. Mandatory orders issued by the Washington Supreme Court and the need to comply with essential public health and safety protocols have caused this court to suspend and/or modify various operations, delay criminal and civil trials, and establish other procedures that have had a profound negative impact on how and when this court considers and renders judgment in cases in virtually all dockets. This has resulted in a continuing substantial backlog of civil, criminal, juvenile, and child welfare matters. The

³ Surveys from July 5th, 2021 suggest that approximately 16% of Washington's renters are behind on rent, or 220,059 households. (<https://www.census.gov/data/tables/2021/demo/hhp/hhp33.html#tables>; see Housing Tables 1b).

COVID-19 challenges have been compounded by the anticipated new demands on this court resulting from *State v. Blake*, 197 Wash.2d 170, 481 P.3d 521 (2021).

- H. Given the administrative backlog this court is facing, the anticipated deluge of unlawful detainer filings following expiration of the Bridge Proclamation 21-09 after September 30, 2021, and implementation of OCLA's right to counsel for indigent tenants in unlawful detainer actions (aka proceedings) presents a continuing threat to the ability of this court to timely hear and fairly decide such cases consistent with statutory deadlines, due process and mandated procedures.
- I. State and local rent-assistance programs offer the opportunity for immediate assistance in addressing rent arrearages (or portions thereof) and avoiding the need to seek recourse through the unlawful detainer process. It is in this court's interest in managing its docket, facilitating just outcomes, and wisely utilizing scarce judicial resources to divert not-yet-filed cases away from the contested unlawful detainer process in court to an eviction resolution pilot program where there is a reasonable likelihood of a just resolution.
- J. Sec. 7(2) of ch. 115, Laws of 2021 requires that, where an ERPP is established under authority of a standing judicial order, landlords use that program before filing an unlawful detainer action based on nonpayment of rent. Section 7(3) requires that the landlord provide an ERPP notice to the tenant of the eviction resolution program along with the 14-day notice to pay or vacate prior to filing an unlawful detainer action. The Court adopts and requires the Landlord to use the form ERPP Notice developed by AOC in collaboration with the Office of the Attorney General. See *Exhibit A* hereto.
- K. Governor Inslee issued Bridge Proclamation 21-09 on June 29, 2021, which is effective from July 1 – September 30, 2021. The Bridge Proclamation is not an extension of the Governor's Eviction Moratorium Proclamation (20-19). All evictions typically allowed under the law, with the exception of non-payment of rent, may resume July 1st.
[OPTIONAL LANGUAGE: The cities of _____ and/or the County of _____
did extend their respective eviction moratoriums. More information
can be found here: [PROVIDE RELEVANT LINKS].
- L. As required by the Bridge Proclamation: (1) The local rental assistance program submitted an attestation to the appropriate entity/entities affirming that it is operational in this county; and (2) the local dispute resolution center has submitted an attestation to the

appropriate entity/entities affirming ERPP is operational in this county. See [ADD RELEVANT LINKS TO ATTESTATIONS.]

- M. *Exhibit A* hereto suffices as the ERPP Notice required by the Bridge Proclamation that the landlord must give to the tenant providing an opportunity to participate in an operational rental assistance program and an operational ERPP.
- N. The necessity of an effective and meaningful ERPP is key to successful diversion of cases from the court. The court recognizes the local HJP and local DRC do not have unlimited human and other resources to handle the anticipated massive influx of nonpayment of rent cases requiring ERPP. The court also recognizes that an effective ERPP requires the local DRC to implement ERPP intake and processing protocols, for example, requiring one e-mail per each ERPP notice related to one tenant and scheduling ERPP meet and confer appointments on a first come-first serve basis as well as other protocols.
- O. As required by Sec. 8 of ch. 115, Laws of 2021 and as interpreted by the Attorney General of Washington pursuant to a letter issued on July 9, 2021, indigent tenants in unlawful detainer actions (aka proceedings) have a right to counsel notwithstanding that OCLA's full implementation of the right-to-counsel plan has not yet occurred. Accordingly, unlawful detainer actions (aka proceedings) involving indigent tenants who have requested counsel will be delayed until OCLA certifies that the conditions precedent to operationalizing the right-to-counsel plan have been met and such certification has been transmitted to this court with the caveat that, because this court is located in a county that has a HJP (or a VLP acting as the HJP provider), the court shall determine whether the tenant is indigent and upon finding that the tenant is indigent, continue the case to allow the tenant to access HJP or other *pro bono* services which may include but not be limited to appearance by a HJP or other *pro bono* attorney on behalf of the tenant in the pending case
- P. It is understood that, pending certification of the right-to-counsel program's availability and subject to the caveat detailed in Para. N hereinabove, the local Dispute Resolution Center (DRC) and local Housing Justice Project (HJP) or Volunteer Lawyer Program acting as a HJP provider are prepared to assist tenants facing the threat of eviction and

help tenants resolve that threat through non-judicial processes including the Eviction Resolution Program (ERPP).

- Q. This court has determined it appropriate to issue this standing order to establish an Eviction Resolution Pilot Program to divert unlawful detainer cases from the docket and facilitate both pre-filing resolution of cases where the principle issue in context is non-payment of rent. The court designates that _____ (judicial officer(s)) will serve as the procedural point person(s) to work with relevant stakeholders on the implementation and ongoing administration of the ERPP and such designation has been provided to the Administrative Office of the Courts.

2. Order:

- A. **Landlord/Landlord counsel's Obligations regarding Eviction Resolution.** Prior to serving and/or filing a summons and complaint for nonpayment of rent *post-moratoria* the landlord or landlord's counsel shall:

(i) ***strictly comply with*** the notice, service, and certification requirements of Sec. 7(3), (4), and (5) of Chapter 115, Laws of 2021, and the Governor's Bridge Proclamation 21-09 issued on June 29, 2021 as applicable;

(ii) meet and confer with the local DRC, the tenant and the tenant's attorney to facilitate the resolution of the issue of nonpayment of rent, *e.g.* accessing rental assistance as well as entering reasonable payment plans; and

(iii) file the ERPP DRC Certification Form at the time of filing a summons and complaint with the court.

- B. **Tenant's Obligations regarding Eviction Resolution.** Tenants must respond to landlords regarding establishing reasonable repayment plans and participate in eviction resolution programs per the timelines established in E2SSB 5160. (*See Governor's Bridge Proclamation – Page 4.*)

C. **DRC Scheduling and Certification of ERPP.**

(1) During the effective period of the Bridge Proclamation, the local DRC shall make every effort to schedule the meet and confer for the landlord and the tenant (and their respective counsel) within 28 days of receipt of the ERPP Notice;

- (2) Once the Bridge Proclamation expires, the local DRC shall make every effort to schedule the meet and confer for the landlord and tenant (and their respective counsel) within 21 days of receipt of the ERPP Notice;
- (3) during and after the expiration of the Bridge Proclamation, the parties may agree to extend the timeframe (as detailed in this section) for scheduling the meet and confer;
- (4) the local DRC shall implement processes to ensure necessary to schedule and hold the meet and confer in the timeframes detailed in this section;
- (5) During the effective time period of the Bridge Proclamation, should a tenant not engage in the first 28 days (after the landlord has issued/served the ERPP notice and, subsequently the 14-day notice to pay or vacate), DRC Certification that the landlord has satisfied the requirements of Sec. 7 of Chapter 115, Laws of 2021 shall issue;
- (6) After the Bridge Proclamation has expired, should a tenant not engage in the first 14 days (pursuant to the ERPP Notice and the 14-day notice to pay or vacate), DRC Certification that the landlord has satisfied the requirements of Sec. 7 of Chapter 115, Laws of 2021 shall issue;
- (7) If a landlord files a nonpayment of rent unlawful detainer case without DRC certification, this Court may address whether the landlord complied with the ERPP and all conditions precedent to suit. Should the court find that the landlord was entitled to DRC certification notwithstanding DRC's failure to certify, the court may proceed with the show cause hearing or trial;
- (8) The DRC may add relevant language to a certificate of ERPP participation prior to its issuance to a landlord that details: whether rent assistance was available at the time of the engagement (*for example*, did the tenant qualify for rent assistance and was rent assistance available in the relevant locality at this time), the date the DRC received the ERPP notice and the date on the ERPP notice, whether the tenant participated in ERPP efforts, whether the tenant had counsel during ERPP, whether the DRC was able to conduct conciliation efforts, and any other relevant information to help the court determine whether the matter is ripe for adjudication.

D. **DRC Reporting Obligations** In order to comply with the requirements of ch. 115, Laws of 2021, Sec. 7(7) related to ERPP data collection, the Court acknowledges that the local DRC (by and through Resolution Washington, *i.e.* ResWA) has agreed to provide and

will provide ERPP data as detailed in Sec. 7(7)(b)-(d) to AOC through an AOC-designated portal. It is understood that AOC will collect, analyze, and organize the data provided by the DRC and provide an ERPP data report to the legislature as required by ch. 115, Laws of 2021 Sec. 7 (8) on the dates identified therein.

E. **Initial Hearing Procedures for Unlawful Detainer Cases.**

(1) Upon implementation of the right to counsel plan for this court by OCLA pursuant to Secs. 8 and 9 of Chapter 115, Laws of 2021, the following provision will take effect: At the first hearing, the court will advise the tenant of their right to appointed counsel if indigent and inquire whether they wish to assert that right. If so, the court shall refer the tenant to the county-specific entity designated by the Office of Civil Legal Aid (OCLA) for eligibility screening and/or appointment of counsel (e.g. Eviction Defense Hotline or legal aid program) by sharing the name and contact number for said entity, unless counsel has previously been appointed for the tenant prior to filing of the case with the court. If a tenant is referred for appointment of counsel, the Court will continue the initial hearing as appropriate to allow the litigant to receive assistance from assigned counsel within appropriate timeframes as allowed by law and/or court rule.

(2) **[RESERVED - LOCAL OPTION #1]** *In non-payment of rent cases in which a DRC Certification was issued after expiration of the Governor's Eviction Moratorium (i.e. after June 30, 2021):*

(a) At the first hearing, the court shall determine:

- (i) whether the landlord has complied with the notice, service, participation, and certification filing requirements of Sec. 7 of Chapter 115, laws of 2021, and the Governor's Bridge Proclamation 21-09 issued on June 29, 2021 as applicable; and
- (ii) whether the landlord and tenant met and conferred with the local DRC for purposes of resolving the issue of nonpayment of rent;

(b) If the tenant fails to appear at the first hearing, and the court finds the landlord has demonstrated compliance with the applicable law, the court may issue an order of default at the request of the landlord;

(c) Sanctions available for the landlord's noncompliance with notice, service, or certification filing requirements include but are not limited to: awarding attorney's fees

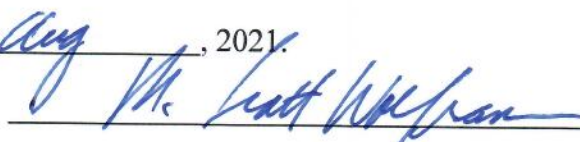
and costs, granting a continuance, and any other relief as allowed by law and/or court rule;

(3) [RESERVED- LOCAL OPTION #2] *In non-payment of rent cases in which a DRC Certification was issued during the Governor's eviction moratorium:* At the first hearing, the court will inquire as to the circumstances surrounding the issuance of the DRC Certification.⁴ The court may continue the matter or consider and grant other relief as allowed by law and/or court rule.

(4) [RESERVED - LOCAL OPTION #3] In non-payment of rent cases where a DRC Certification was issued along with an agreement between the parties, the court reserves its ability to enforce such agreements, including those that reached agreement on matters addressed by the rental agreement beyond nonpayment of rent.

F. **Superseding Effect.** This order supersedes all prior standing orders issued with respect to the practice and procedure relating to the pilot Eviction Resolution Program, if any.

DATED this 24 day of Aug, 2021.


The Honorable M. SCOTT WOLFRAM
Presiding Judge

⁴ E.g., whether rent assistance was available at the time of the engagement (*for example*, did the tenant qualify for rent assistance and was rent assistance available in the relevant locality at this time), the date the DRC received the notice and the date on the notice, whether the tenant participated in ERPP efforts, whether tenant had counsel during ERPP, whether DRC was able to conduct conciliation efforts, and any other relevant information to help the court determine whether the matter is ripe for adjudication.